



UNITED STATES PATENT AND TRADEMARK OFFICE

SM

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/083,235	02/26/2002	Jaime S. Vargas	109	6671
33109	7590	10/01/2004		EXAMINER
CARDICA, INC. 900 SAGINAW DRIVE REDWOOD CITY, CA 94063			PANTUCK, BRADFORD C	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 10/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/083,235	VARGAS, JAIME S.
	Examiner Bradford C Pantuck	Art Unit 3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07/02/2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 19-23 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-4, 6-8, 11, 12 and 14-16 is/are rejected.
- 7) Claim(s) 5, 13, 17, 18 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o).
Correction of the following is required: Passage (86) and slot (84) are set forth in the specification, but it is unclear where in the specification a channel, as set forth in claim 13, is defined and explained. Terminology consistent with the specification should be used in the claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,911,926 to Peters. Peters discloses two clips spaced apart from one another and slideable along bar (12) towards and away from each other. Connector deployer (16) [Fig. 2] is oriented to deploy a connector (the whole assembly 10) and is *capable* of deploying this connector through two flaps.
2. Regarding Claim 11, connector deployer (16) is capable of deploying a staple.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 6-8, 11, 12, and 14-16 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 3,265,069 to Healey, Jr. et al. Regarding Claims 1 and 11, Healey discloses two clips (each 72) movable from a spaced apart configuration to a second position in which they are closer to one another. Each clip (72) comprises two members (80, 82), which hold a flap of tissue, as shown in Fig. 14. The clips (72) can move longitudinally along the axis of the blood vessel (74), as is evident from the joints (92).

Healey discloses stapling as a means of connecting the two tissues [Column 2, lines 49-52], and generally one of ordinary skill in the art would employ a *stapler* (i.e., connector deployer) to apply such a staple. However, should Applicant argue that the act of applying a staple does not necessitate a stapler; it would be obvious to one of ordinary skill in the art to use a stapler to apply such a staple.

4. Regarding Claims 2 and 15, Healey discloses clamp (76/78) in the open position in Fig. 16 and in the closed (clamping) position in Fig. 15. Figure 14 shows both clamps working together, although only member (76) of each clamp is visible from

the perspective shown. Each clamp (76/78) is connected to a clip (72) at its distal end.

5. Regarding Claims 3 and 4, Healey discloses jig (86), a member “for guiding a tool or for holding machine work in place,” according to the general definition of a jig. Jig (86) guides member (76) relative to member (78), thus fixing one part of the clamp to the other.
6. Regarding Claim 6, Healey discloses handle (20) [see embodiment shown in Figures 1 and 2] for urging (rotating) the clamp about the jig (86).
7. Regarding Claims 7 and 8, boss (90) is a tubular protuberance aligning the two clamping members (76/78).
8. Regarding Claim 12, the clamp is capable of being used as an actuator to deploy a staple, by compressing it between the two members.
9. Regarding Claim 14, Healey discloses a connector deployer (36) on the first clamp that corresponds and connects to connector receiver (38).
10. Regarding Claim 16, spring (92) is a kind of lever, which when it moves to an extended position (as shown in Fig. 15), locks the first arm (76) and second arm (78) in a closed position.

Allowable Subject Matter

11. Claims 5, 13, 17, and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

12. Applicant's arguments, see pages 2-5 of the amendment filed 07/02/2004, with respect to the rejection(s) of claim(s) 1-18 under U.S. Patent No. 5,158,567 to Green, U.S. Patent No. 4,653,636 to Goldstein, and U.S. Patent No. 5,011,487 to Shichman have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of U.S. Patent No. 3,265,069 to Healey, Jr., et al.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 1,217,637 to Rink

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from

Art Unit: 3731

the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradford C Pantuck whose telephone number is (703) 305-8621. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (703) 308-2154. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BCP
BCP

September 20, 2004

J
ANHTUAN T. NGUYEN
PRIMARY EXAMINER

9/20/04